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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 PENNSYLVANIA PUBLIC SCHOOL
4 EMPLOYEES' RETIREMENT SYSTEM,

5 Plaintiff,

6 v.

11 CV 00733 (WHP)

7 BANK OF AMERICA CORPORATION,
8 ET AL.,

9 Defendants.

10 TELEPHONE CONFERENCE

11 New York, N.Y.
12 May 20, 2013
11:11 a.m.

13 Before:

14 HON. WILLIAM H. PAULEY III,

15 District Judge

16 APPEARANCES (Telephonically)

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18 Attorneys for Plaintiff Pennsylvania Public School
employees Retirement System

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(In chambers; via telephone)

THE COURT: Good morning, counsel. This is District Judge William Pauley. You're on a speaker phone and a court reporter is present recording what's being said. The appearances of counsel will be noted at the front of this proceeding. You need not give your appearances now.

I ask only that each time you speak, you identify yourself first so that I and the court reporter can keep track of who's speaking.

Now, I have received a proposed discovery and case management order. I'll suggest to you two things, one, that it's awfully tentative with regard to a number of things and, second, this is not a suggestion, this is a conclusion on my part, it's far too protracted. And I'm willing to give you a little time to decide how you're going to proceed with respect to a class certification, but I think that the notion that we're not going to substantially complete document production until the end of January 2014 is too long.

So who wants to be heard on the question?

MR. ROSEN: Your Honor, this is Mark Rosen, counsel for the plaintiff.

THE COURT: Yes.

MR. ROSEN: We will be glad to accommodate ourselves to whatever schedule you adapt, but frankly, the burden is far greater on the -- I expect the burden will be far greater on

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1 the defendant than the plaintiff because they'll be doing most
2 of the production. And the schedule was adopting reflecting
3 their requests. We'd be glad to deal with a more expedited
4 schedule, if your Honor feels it appropriate.

5 One thing we proposed -- We had some preliminary
6 discussions with the Skadden firm when they were representing
7 and speaking for all the defendants, and one of the things we
8 had proposed to them that we thought might expedite the
9 discovery process is to tell us, in other cases they've been
10 involved in, in other regulatory proceedings they've been
11 involved in, some sense of the magnitude of the production.

12 And some of those productions they might be able to
13 tender to us, rather than reinventing the wheel. Not that that
14 would complete all of the discovery we needed, but we suspected
15 an awful lot of what we need would be contained in those
16 already, and if they follow that approach, we think that might
17 expedite the process. They did not -- I don't want to speak
18 for them, but they did not appear to embrace that idea.

19 MR. MUSOFF: Your Honor, this is Scott Musoff. I
20 think that's not entirely accurate. We've been having a series
21 of meet and confers with the plaintiffs regarding that and your
22 Honor may recall at the oral argument, plaintiff had asked
23 permission to serve a document request during the stay, which
24 we didn't oppose, so that we'd have a better sense of what
25 documents they were looking for. They chose not to do that and

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1 served us with their document request on Friday.

2 THE COURT: Can you, just for my edification, just
3 generally describe the size of the document request? I'm not
4 familiar with it. It hasn't been -- nor do I necessarily want
5 to see it, unless there's some dispute. But does it go back to
6 the year gimel?

7 MR. MUSOFF: It's pretty broad ranging, your Honor.
8 I'm pulling it out now. And as you can imagine, it covers a
9 wide variety of issues in this case from, some of which may or
10 may not still be in the case. But that having been said, we
11 did have a beginning series of meet and confers with them, even
12 before receiving their document request, and we are going to
13 see if any of these requests have already been gathered and
14 produced in other matters, and that will substantially save
15 some time.

16 We also -- you know, we're trying to pick a realistic
17 date without having to come back to the Court, but that having
18 been said, you know, we're happy to try and work on a slightly
19 more aggressive schedule as well.

20 THE COURT: Right. Well, look, does anyone else want
21 to weigh in on this, on the issue of document production?

22 All right. Then silence is golden. Here's my view.
23 I don't have a problem with the best efforts, sort of staged
24 productions that you've proposed in your plan, but I think that
25 document production should be substantially complete by

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1 November 29th. So I'm starting by pruning two months there.

2 And then, it seems to me, you haven't come forward
3 with some notion as to how many depositions you intend to take.
4 Obviously, I share the parties' view that more depositions or
5 more hours of depositions will be necessary in this case, and
6 I'm probably inclined, in that regard, to see it in terms of
7 hours as opposed to the number of depositions, leaving each
8 party free to decide how they're going to use their hours. So
9 I'd like you to start thinking in those terms.

10 But generally, Mr. Rosen, how many depositions do the
11 plaintiffs think they're going to take?

12 MR. ROSEN: Your Honor, it's hard to give you a
13 definitive answer.

14 THE COURT: I'm not asking for a definitive answer. I
15 know we can't get one, and I'm not going to fix one now
16 because --

17 MR. ROSEN: I understand that, your Honor. I would
18 assume somewhere in the range of 50 to 60.

19 THE COURT: All right.

20 MR. ROSEN: That's my expectation. It could change,
21 but that's my best guess at this time, your Honor.

22 THE COURT: All right. Mr. Musoff, what's your
23 perspective on this?

24 MR. MUSOFF: We believe 50 to 60 depositions -- this
25 is Scott Musoff again -- seems a little bit exorbitant for even

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1 a case of this size, and we're thinking that in the, you know,
2 30-deposition range would be more appropriate.

3 THE COURT: Well, we're going to revisit and decide on
4 this issue after you've gotten into document production a
5 little here and you've had a chance to meet and confer further
6 with respect to sort of class certification and how that should
7 proceed.

8 And what I'll be looking to do is fix another
9 conference with you folks at the end of July for the purpose of
10 fixing some more parameters on depositions and discovery. I'll
11 tell you that I'm inclined to think that fact discovery in this
12 case could be completed -- I mean, my tentative suggestion is
13 May 30th of next year so that we could tie off expert discovery
14 and wrap things up by the middle of September of next year, or
15 September 30th. But that's tentative. I'm not going to freeze
16 it in stone.

17 But I want you to start thinking in terms of what the
18 Court's thinking because I'm not going to push this out. We
19 know what the lifeline of these cases are, and it's important,
20 I think, for the parties to get class certification onto the
21 radar scope and tee'd up in this case.

22 I'd invite reaction from anyone who wishes to speak.

23 MR. ROSEN: Your Honor, this is Mark Rosen. We can
24 live with that approach, and we certainly are receptive to your
25 Honor's inclination to address class certification sooner

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1 rather than later.

2 THE COURT: All right. I tell you that generally --
3 you may be able to persuade me differently, but generally, if a
4 deposition is going to be taken in connection with class
5 certification, I think it should be both the merits and class
6 deposition. But you're free to endeavor to persuade me to
7 approach it differently in this case, if you think it's
8 appropriate.

9 My sense is that because discovery was stayed here for
10 a lengthy period of time, that the parties are just getting
11 down to business and I just want to try to bring people into
12 focus. So I think that the notion of rolling of privilege
13 logs, based on rolling productions, is all fine.

14 I will tell you that, if I can, I will supervise
15 discovery in this case; so I will not send it to the
16 magistrate, unless I find myself overwhelmed with other matters
17 and that I just can't get to it. In which case, I will then
18 send discrete discovery disputes to Magistrate Judge
19 Gorenstein.

20 And what I would like to get from the parties by,
21 let's say, by the end of -- by July 12, is some proposal with
22 respect to class certification, together with the parties'
23 respective positions on both the number of depositions, the
24 number of people and the number of hours of deposition that the
25 parties are requesting, and we could have a conference in this

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1 matter by telephone once again on July 26th at 11:00. Is that
2 acceptable to the parties?

3 MR. ROSEN: Mark Rosen for the plaintiffs. That's
4 acceptable.

5 MR. MUSOFF: Your Honor Scott Musoff from Skadden,
6 that's acceptable.

7 THE COURT: Are there any issues that counsel want to
8 raise while we're together?

9 MR. MUSOFF: Your Honor, Scott Musoff. Two
10 housekeeping matters to ask your Honor's preference. One is
11 that Mr. Noski is also substituting separate counsel.
12 Mr. Jossen from Dechert, who is on the phone, has already
13 entered a notice of appearance.

14 THE COURT: Right.

15 MR. MUSOFF: And didn't know -- I know we've bombarded
16 the Court at the time, just because of the deadline, with
17 several motions. I didn't know if your Honor wanted a formal
18 motion for substitution or a proposed order, or if there was
19 anything more convenient for the Court.

20 THE COURT: Formal motions are not necessary.
21 Everyone's adult. Just submit stipulations. In the customary
22 form, a stipulation and order with what the rule requires, just
23 a supporting declaration that says here's incoming counsel, and
24 the case is not going to be delayed and they're up to speed.

25 MR. MUSOFF: We will do that. And then, your Honor, I

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1 understand that several of the accounts for the individual
2 defendants who are now on board, as well as some of their
3 clients, are traveling over the next few weeks, and we have an
4 answer date for the individuals of June 3rd and I believe there
5 was some counsel that wanted to request a slight extension for
6 the individuals to June 17th, which won't delay any of the
7 discovery or responses to the document requests or anything.

8 THE COURT: Mr. Rosen, you don't have any problem with
9 that, do you?

10 MR. ROSEN: No, I don't have a problem, especially as
11 Mr. Musoff said, it's not going to delay the discovery process.

12 THE COURT: I will enter, as part of my scheduling
13 order from this conference, an extension of time for all
14 defendants to interpose answers to the complaint to June 17.
15 Any other issues that any counsel would like to raise?

16 MR. ROSEN: None for the plaintiffs, your Honor.

17 THE COURT: I assume the parties are putting together
18 a proposed protective order that will be consistent with my
19 practices to facilitate document production?

20 MR. MUSOFF: That is correct, your Honor. Scott
21 Musoff.

22 THE COURT: Okay. All right. Anything else from the
23 defendants? Once again, silence is wonderful. So I thank you
24 all. I fixed a time for the conference in July. You'll get me
25 your report two weeks in advance, and we'll take it from there.

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1 All right? Thank you so much.

2 MR. MUSOFF: Thank you, your Honor.

3 MR. ROSEN: Thank you, your Honor.

4 (Adjourned)